IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-956

Supreme Court, U. S.
FILED
MAR 13 1972
MICHAEL RODAK, JR., CLERK

BILLIE K. FREEMAN, Guardian of TERRY FREEMAN; VERNON RANDALL OSTLER, a minor by STEPHEN OSTLER, his father and natural guardian; MARCK CHARLES SIMMONS, by and through his guardian ROBERT C. SIMMONS,

Petitioners,

—v.—

ALMON FLAKE, *et al.*,

Respondents.

AL WHITE, a minor by his father, V. T. WHITE,

Petitioner,

—v.—

BOARD OF EDUCATION OF HOBBS MUNICIPAL SCHOOL DISTRICT NO. 16, *et al.*,

Respondents.

GREGORY A. CRANSON and RANDALL J. CRANSON, minors, by and through their natural guardian, WALTER N. CRANSON,

Petitioners,

—v.—

EAST OTERO SCHOOL DISTRICT R-1, *et al.*,

Respondents.

GARY CHRISTMAS, a minor by his father and next friend, WILLIAM R. CHRISTMAS,

Petitioners,

—v.—

THE EL RENO BOARD OF EDUCATION, *et al.*,

Respondents.

REPLY BRIEF FOR PETITIONERS

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In the

Supreme Court of the United States

October Term, 1971

No. 71-956

Billie K. Freeman, Guardian of Terry Freeman; Vernon Randall Ostler, a minor by Stephen Ostler, his father and natural guardian; Marck Charles Simmons, by and through his guardian Robert C. Simmons,

Petitioners,

—v.—

Almon Flake, *et al.*,

Respondents.

Al White, a minor by his father, V. T. White,

Petitioner,

—v.—

Board of Education of Hobbs Municipal School District No. 16, *et al.*,

Respondents.

Gregory A. Cranson and Randall J. Cranson, minors, by and through their natural guardian, Walter N. Cranson,

Petitioners,

—v.—

East Otero School District R-1, *et al.*,

Respondents.

Gary Christmas, a minor by his father and next friend, William R. Christmas,

Petitioners,

—v.—

The El Reno Board of Education, *et al.*,

Respondents.

REPLY BRIEF FOR PETITIONERS

The central issue in this case is the constitutionality of public high school regulations which govern the hair length of male students.

Each of the groups of respondents has filed a brief opposing the petition for *certiorari*. Essentially, three contentions are made: (1) that hair length regulations do not infringe upon constitutionally protected rights, (2) that federal courts should not interfere in the "day to day" operation of the schools, and (3) that there was no real conflict among the Circuits because each case was determined on its specific facts. The first two contentions merely reflect the quarrel over the proper rule of law, a dispute which the Tenth Circuit resolved in the respondents' favor, but which four other Circuits have resolved for the students' claims.

The third point raised—that petitioners have posited a false conflict among the Circuits and that the different results have been determined by different facts—is simply wrong. First, the Tenth Circuit itself noted that the Circuits "are sharply divided on the constitutionality of regulations pertaining to the length of the hair of male students in state public schools." Pet. for certiorari, p. 4a. Second, the court below did not even purport to examine the factual records in the four cases to determine whether the bases for the regulations were reasonable, let alone compelling. Had it done so, it would have been required to grapple with the findings made by the District Court in the New Mexico case (*White*) to the effect that no justification for the hair regulation had been shown. Instead, holding that the basic contentions of the students did not rise to a

constitutional dimension and should not be heard in a federal court, the court of appeals reversed in *White* and stated that all of the complaints should have been dismissed for failure to state a claim upon which relief could have been granted.

That holding is precisely what the dispute among the Circuits is all about. If, as four Circuits have held, school hair length regulations presumptively infringe basic or fundamental rights, then school authorities must make a certain type of showing to support the intrusion. On the other hand, if such rules do not "directly and sharply implicate basic constitutional values", then a lesser showing of necessity may be sufficient. But the conclusion that one reaches depends on the rule of law that is to be applied. And it is for the clarification of the proper rule of law that petitioners seek *certiorari*.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be granted.

Respectfully submitted,

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